

Attorney Docket No.: 2870/458

PATENT

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Cioca, et al.

Serial No.: 09/838,649

Group Art Unit: 1617

Filed: April 19, 2001

Examiner: Wells, Lauren Q.

For: Stable Antimicrobials in Structured Water

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AKO  
12/24/02**RESPONSE PURSUANT TO 37 CFR 1.111 and 1.143**

The Assistant Commissioner of Patents and Trademarks

Washington, D.C. 20231

Dear Sir:

In the Examiner's Office Action, a restriction requirement to one of two groups is made. Applicants provisionally elect with traversal the invention described in Group I to Claims 1-5, 9-13, 19-20, and 22. The invention of Group I, the elected group, is drawn to a structured water comprising a cluster structure and at least two antimicrobial agents within said cluster structure; and Group II is drawn to a method of making the aforesaid structured water. The Examiner alleges that Group I is distinct from Group II because the process can be used to make another and materially different product, namely, structured water comprising an antioxidant. However, because it is difficult to imagine how a process of incorporating one agent, namely antimicrobials, could produce the incorporation of another, antioxidant in the cluster structures of structured water – and because it is impossible in fact, Applicants traverse the restriction made by the Examiner.

The provision in MPEP 806.05(f) establishes that the process as claimed can be used to make another and different product. According to the Examiner, the claims designated in Group II are drawn to a method of making structured water. However, this is only a partial representation of what is claimed. As an illustration of one of the process claims in the present invention, Claim 6 is provided below.

6. A structured water prepared by adding an antimicrobial effective amount of silver ions and potassium sorbate to unstructured feed water, reducing the surface tension of the feed water, and processing the feed water in a device for producing structured water.  
(emphasis added)

There are a two key differences between the process to make the structured water of the present invention incorporating the antimicrobial agents in the cluster structures of structured water, and the structured water comprising antioxidant active agents, noted by the Examiner. First, the claimed process includes the step of reducing the surface tension of the feed water before processing it to make structured water, and there is no evidence that this process will result in the incorporation of the antioxidant. Second, the process of the present invention as claimed calls for the addition of both silver ions and potassium sorbate to unstructured feed water. The addition of silver ions and potassium sorbate cannot possibly make structured water comprising antioxidant agents as neither the silver ion nor the potassium sorbate is an antioxidant. Moreover, as described in the specification of the present invention, it is the combination of these two antimicrobials in an antimicrobial effective amount that permits the incorporation of these antimicrobials stably into the cluster structures of structured water. There is no logical reason to discern how a structured water comprising antioxidant active agents can result from the claimed process which is devoid of any antioxidant. Rather, since a distinct process is used to incorporate the antimicrobial into the cluster structures of structured water, this lends supports to the theory that the same process will not make another materially different product.

Likewise, with respect to part (2) of MPEP 806.05(f) regarding the product, the product of the present invention has not been shown to be made by another materially different process. The present process of incorporating the antimicrobials into cluster structures of structured water stably such that it has antimicrobial activity is not the same as the processing steps to incorporate antioxidants. To support this, Applicants direct the Examiner's attention to the present specification wherein at page 5, the conditions required to stably incorporate the antimicrobials into the cluster structure of structured water are described. At page 6, lines 5 to 12, the difficulty in incorporating silver ions into the cluster structure of the structured water is addressed and indicates that the stability of the structured water having the antimicrobials incorporated in the cluster structures is enhanced by reducing the surface tension of the feed water. Furthermore, as opposed to one antimicrobial or the other, or even in combination with an antioxidant, it is the combination of the silver and the potassium sorbate that contributes to the stable incorporation of the antimicrobial into the cluster structure because it is believed that the presence of the potassium sorbate permits a perturbation in the cluster structure opening space for the large mass and large ionic radius of the silver ion to enter into the cluster structure. Finally, the feed water for incorporating the antimicrobial into the cluster structure is distinct from the feed water used to incorporate an antioxidant. Specifically, at line 6, page 5, the concentration of the stabilizing cations and anions are mentioned in relation to stabilizing the antimicrobials in the cluster structures of structured

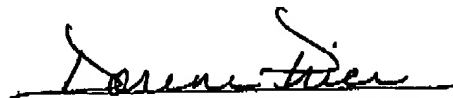
water and this is in addition to reducing the surface tension of the feed water. Thus, the process of incorporating antimicrobials into the cluster structure of structured water is distinct from the process of making structured water incorporating antioxidants. The structured water having antimicrobials stably incorporated in its cluster structure is not made by another and materially different process, and the process of making it is not used to make another and materially different product. Therefore, Applicants assert that the restriction requirement is improper because both groups relate to one singular invention, namely, the antimicrobial incorporated in the cluster structures of structured water.

### CONCLUSION

For the reasons stated above, the claims of Groups I and II relate to one invention of the antimicrobial incorporated within the cluster structures of structured water and therefore, Applicants request withdrawal of the restriction requirement. Applicants also submit herewith an Associate Power of attorney requesting that the address for correspondence be changed. As the claims of the present application are believed to be in condition for allowance, issuance of a Notice of Allowance is respectfully solicited.

Respectfully submitted,

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